

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

42 IAC 1-4-4

The spouse of an INDOT employee received fringe benefits from the engineering company she worked for which had a business relationship with INDOT. SEC found the Gifts rule was not violated since the benefits were considered part of the spouse's compensation and were therefore not gifts to the employee from a person who had a business relationship with his agency.

No. 05-I-12
State Ethics Commission
Official Advisory Opinion
September 8, 2005

Background:

An airport engineer in the Aeronautics Section of the Multi-Modal Transportation Division of the Indiana Department of Transportation ("INDOT") got married this past July to a current employee of an engineering firm. The engineering firm has been selected to provide the airside planning and design for the development of a 42-gate Midfield Terminal complex at Indianapolis International Airport. The total estimated program costs are approximately \$1 billion. The engineering firm is working closely with the Owner's Technical Representatives, the Master Architect, and the Program Construction Managers to facilitate a coordinated effort to complete the design and construction for this major development project.

The airport engineer's spouse began employment at the engineering firm in May 2005. The airport engineer's job at INDOT consists of reviewing grant payments and design plans of the engineering firm. He also attends construction meetings and programs airport capital improvement program funds. To the extent that the engineering firm receives grant and program funds through INDOT, they have a business relationship with the airport engineer's agency. Most of the airport engineer's actions are advisory in nature and he has no decision-making authority over the engineering firm.

The airport engineer's spouse is a senior project engineer in one of the engineering firm's airport divisions and is being screened from working on Indiana projects. In the course of her employment she receives many "fringe benefits". Through her employment, she is offered free Colts tickets, free golf outings, and other complimentary tickets to entertainment events around the city. September 25th is their annual company picnic for employees and their families. The event is catered, and entertainment is provided, all free of charge.

Questions:

1. Would the benefits the airport engineer's spouse receives through her employment be considered "gifts" to the "spouse" of a state employee from a person who

has a business relationship with the airport engineer's agency within the meaning of the gift rule?

2. If the airport engineer's spouse accepts these benefits, would they be considered "gifts" to the airport engineer from a person who has a business relationship with his agency within the meaning of the gift rule?

Relevant Law:

Gifts

42 IAC 1-4-4

(a) A state employee, or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, or drink from a person who has a business relationship with the employee's agency or is seeking to influence an action by the employee in his/her official capacity.

The following shall not be subject to this section:

(1) Gifts and favors, services, entertainment, food, or drink from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least 25 individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value.

(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.

(5) Gifts, favors, services, entertainment, food, or drinks from relatives, so long as:

(A) the gifts or other items of value are not deducted as a business expense;

(B) the gift giver is not seeking to influence an action by an employee in his or her official capacity. In cases involving ongoing social relationships, employees should seek a waiver under subsection (b) before accepting a gift.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee conducting official action with the employee's agency.

(8) Discount and other promotional programs approved and made available to state employees through the state personnel department or the Indiana department of administration.

(b) An employee's state officer or appointing authority may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver shall be in writing and shall identify the following:

- (1) The employee.
- (2) The nature and value of the gift.
- (3) The donor of the gift.
- (4) Why acceptance of the gift is in the public interest.

Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(c) A person who has a business relationship with an employee's agency shall not provide any:

- (1) gifts;
- (2) favors;
- (3) services;
- (4) entertainment;
- (5) food; or
- (6) drink;

to such employee if the employee would not be permitted to accept the gift, favor, service, entertainment, food, or drink under subsection (a).

(d) An employee shall not personally accept an honorarium for himself/herself for anything that may be considered part of the state employee's official duties. However, a state employee may accept an honorarium in this situation on behalf of the state. The state employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund. A state employee may personally accept an honorarium or fee for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources. However, in no case can a state employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

(e) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law.

IC 4-2-6-1(a)

(4) "Business relationship" means dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:

- (A) a pecuniary interest in a contract or purchase with the agency; or
- (B) a license or permit requiring the exercise of judgment or discretion by the agency.

Conclusion:

The Commission believes the first thing that needs to be done in these situations is to ensure that the employee is screened from making a decision or vote where he or his immediate family may have a financial interest in the outcome, consistent with the conflict of interest rule in IC 4-2-6-9. By virtue of the airport engineer's job description, he has no decision-making authority with respect to the engineering firm. His job at INDOT as it relates to the engineering firm consists of reviewing design plans, programming airport capital improvement program funds, reviewing grant payments, and attending construction meetings. Most of his actions in this area are purely advisory; he has no decision-making powers over the engineering firm. In fact, the Aeronautics Manager makes all final decisions concerning the engineering firm. Therefore, the airport engineer would not be placed in the position of making a decision or vote on a matter where he or his immediate family would have a financial interest in the outcome of the matter.

The Commission finds that the benefit to the spouse from her employer is not a "gift" to her since it would be part of her compensation as an employee of the company she works for. If the state employee then receives the benefit from the spouse it would not be considered a gift under the gift rule since the benefit does not come from a person with a business relationship with the person's agency. The restrictions in subsection (5) of the gift rule would not apply. This Commission would still request the employee to make a disclosure to his appointing authority or agency ethics officer for each benefit received; however, no waiver under subsection (b) is required. This would satisfy the "disclose and recuse" policy which forms the basis of the gift rule.